IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Bail Appl..No. 5805 of 2007()

CRIME NO.771/2005 OF KOTTARAKKARA POLICE STATION

: PETITIONER/IST ACCUSED

ANIL KUMAR, S/O.BHASKARA PILLAI,
ANIL BHAVAN, THAZHATH KULAKKADA,
KOTTARAKKARA.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENTS: COMPLAINANT & STATE

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1. THE SUB INSPECTOR OF POLICE,
KOTTARAKKARA POLICE STATION,
KOTTARAKKARA.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5805 of 2007

Dated this the 26th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found to keep in his possession 750 litres of wash and 15 litres of arrack. The crime was registered. Investigation is now complete. Final report has already been filed, submits the learned Public Prosecutor .

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor submits that the final report having already been filed, it is for the petitioner to surrender before the learned Magistrate and seek regular bail in the ordinary course. No circumstances are there to justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor .

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in

execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-